

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TERRY SPURGEON, as custodian for the
benefit of James E. Spurgeon, individually and
on behalf of all others similarly situated,)
Plaintiff,)
v.)
PACIFIC LIFE INSURANCE COMPANY,)
Defendant.)

CASE NO. 06-983-GPM

JAMES E. SPURGEON, individually and
on behalf of all others similarly situated,
Plaintiff,
v.
PACIFIC LIFE INSURANCE COMPANY,
Defendant.

**PACIFIC LIFE INSURANCE COMPANY'S
MOTION TO DISMISS**

Pacific Life Insurance Company (“Pacific Life”) moves to dismiss the complaint in this case pursuant to Federal Rule of Civil Procedure 12(b)(6) and the Securities Litigation Uniform Standards Act (“SLUSA”), *codified at 15 U.S.C. §§ 77p & 78bb(f)*.

Dismissal is required under the United States Supreme Court's unanimous decision in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 126 S. Ct. 1503 (2006), and the Seventh Circuit's equally unanimous panel decision in *Bradfisch v. Templeton Funds, Inc.*, 2006 U.S. App. LEXIS 12394 (7th Cir. May 19, 2006), *rehearing denied* (with additional explanation) (June 15, 2006), *motion to vacate denied* (June 19, 2006). These 2006 decisions, by controlling

authority, establish that this case falls within SLUSA, and as such, may not be maintained in any court. *See* 15 U.S.C. §§ 77p(b), 78bb(f)(1).

The Supreme Court's and Seventh Circuit's decisions make clear that Spurgeon is attempting to slip by the legal framework Congress expressly provided by bringing this securities class action under state law. They also make clear that Congress intended such lawsuits to be dismissed at the earliest stage of litigation. Accordingly, Pacific Life moves this Court to dismiss plaintiff's complaint with prejudice.

Dated: December 5, 2006

Respectfully submitted,
PACIFIC LIFE INSURANCE COMPANY
By its attorneys,

s/W. Jason Rankin
Larry E. Hepler # 01195603
W. Jason Rankin # 06237927
Hepler, Broom, MacDonald,
Hebrank, True & Noce, LLP
Two Mark Twain Plaza, Suite 300
103 West Vandalia Street
Edwardsville, IL 62025-0510
Telephone: (618) 656-0184
Facsimile: (618) 656-1364

Of Counsel:
Steven B. Feirson
Stephen J. McConnell
Nory Miller
DECHERT LLP
2929 Arch Street
Cira Centre
Philadelphia, PA 19104
Telephone: (215) 994-4000
Facsimile: (215) 994-2222

Kathleen N. Massey
DECHERT LLP
30 Rockefeller Plaza
New York, NY 10112
Telephone: (212) 698-3500
Facsimile: (212) 698-3599

Certificate of Service

The undersigned certifies that a copy of the foregoing has been served upon the attorneys of record on this 5th day of December, 2006, by operation of the Court's ECF system, which will send notice of said filing to the following:

Stephen M. Tillery – stillery@koreintillery.com

and also by mailing copies to the following by enclosing same in envelopes addressed as below, and depositing them in the U. S. Mail at Edwardsville, Illinois, at 5 p.m.:

Robert L. King
Swedlow & King LLC
701 Market Street, Suite 350
St. Louis, MO 63101

George A. Zelcs
Korein Tillery
205 N. Michigan Avenue, Suite 1950
Chicago, Illinois 60601
312-641-9750

John J. Stoia, Jr., Esq.
Timothy G. Blood, Esq.
William J. Doyle II, Esq.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Tel: 619-231-7423

Andrew S. Friedman
Francis J. Balint, Jr.
Bonnett, Fairbourn, Friedman & Balint, P.C.
2901 N. Central Avenue, Suite 1000
Phoenix, Arizona 85012
Tel: 602-274-1100
Attorneys for Plaintiff and the Putative Class

s/W. Jason Rankin